A

FIRMPOWER SDN BHD & ORS

v.

THE CITY SECRETARY COUNCIL OF THE CITY OF KUCHING SOUTH & ANOR

B

HIGH COURT SABAH & SARAWAK, KUCHING
RHODZARIAH BUJANG JC
[JUDICIAL REVIEW NO: JR-10-2009-I]
26 NOVEMBER 2009

C

ADMINISTRATIVE LAW: *Judicial review - Certiorari - Applicants seeking leave to issue writ of certiorari to quash notice issued by 1st respondent ordering 3rd applicant to cease carrying on their business of selling tickets for numbers forecast totalisator at their premises - Whether*

D

applicants must obtain a licence under Kuching Municipal Council (Licensing of Miscellaneous Occupation) By-Laws - Meaning of "licensed lottery" under By-Laws

BETTING, GAMING AND LOTTERY: *Lottery - Licence - Applicants seeking leave to issue writ of certiorari to quash notice issued*

E

by 1st respondent ordering 3rd applicant to cease carrying on their business of selling tickets for numbers forecast totalisator at their premises - Whether applicants must obtain a licence under Kuching Municipal Council (Licensing of Miscellaneous Occupation) By-Laws - Meaning of "licensed lottery" under By-Laws

F

LOCAL GOVERNMENT: *Licence - City Council - Applicants seeking leave to issue writ of certiorari to quash notice issued by 1st respondent ordering 3rd applicant to cease carrying on their business of selling tickets for numbers forecast totalisator at their premises - Whether applicants must*

G

obtain a licence under Kuching Municipal Council (Licensing of Miscellaneous Occupation) By-Laws - Meaning of "licensed lottery" under By-Laws

STATUTORY INTERPRETATION: *Construction of statutes - Purposive interpretation - Meaning of "licensed lottery" under Kuching*

H

Municipal Council (Licensing of Miscellaneous Occupation) By-Laws

WORDS & PHRASES: *"licensed authority" - Kuching Municipal Council (Licensing of Miscellaneous Occupation) By-Laws - Meaning of*

I

This was an application by the applicants for leave to issue a writ of *certiorari* to quash a notice issued by the 1st respondent ordering the 3rd applicant to cease carrying on their business of selling tickets for numbers forecast totalisator at their premises, as they were not issued with a licence to so operate under the Kuching Municipal Council (Licensing of Miscellaneous Occupation) By-Laws ('By-Laws').

Held (dismissing the application with costs):

(1) The words "licensed lottery" in the By-Laws should not be given a literal interpretation to mean a lottery operation which has been issued with a "license" *per se* but one which means that the establishment of the operation has been sanctioned by an authority competent to do so. In this case, that authority would be the Malaysian Totalisator Board. To give a different interpretation to the words "licensed lottery" would be to render absurd the operation of the By-Laws in that an unlicensed lottery is allowed to operate without paying any licensing fees to the 1st respondent. This is also tantamount to the court condoning and encouraging the proliferation of unlicensed lottery outlets in the state, thus defeating the very object of requiring licences to be issued in the first place, which is so that the 1st respondent can monitor and regulate the operation of these outlets. Therefore, the applicants' operation fell within the definition of "licensed lottery" in the By-Laws and they must obtain a licence. The undisputed fact was that they did not do so and there was no room for argument on the legality of the 1st respondent's action in issuing the impugned notice. Hence, their application for leave was frivolous and vexatious, and they did not cross the threshold for leave to be given to file their application for *certiorari* as well as the other reliefs sought in their application. *Nothman v. Barnet London Borough Council* (foll). (paras 8-13)

Case(s) referred to:

Nothman v. Barnet London Borough Council CA [1978] 1 WLR 220 ***(foll)***

Tetuan Kumar Jaspal Quah & Aishah v. Far Legion Sdn Bhd & Anor [2007] 3 CLJ 230 CA ***(refd)***

The Federal Commissioner of Taxation v. United Aircraft Corporation 68 CLR 525 ***(refd)***

Legislation referred to:
Pool Betting Act 1967, s. 32(2), (3)

Trade Union and Labour Relations Act 1974 [UK], sch. 1, para 10

For the applicants - Wong Sing Nang; M/s Wong, Orlando Chua & Kuok
For the respondents - JC Fong SLC (Saferi Ali with him); State AG's Chambers

Reported by Suresh Nathan

JUDGMENT

Rhodzariah Bujang JC:

[1] By an application dated 16 September 2009, the applicants have applied for leave to issue a writ of *certiorari* to quash a notice dated 26 August 2009 issued by the 1st respondent. The notice ordered the 3rd applicant to cease carrying on their business of selling tickets for numbers forecast totalisator at their premises as they were not issued with a license to so operate under the Kuching Municipal Council (Licensing of Miscellaneous Occupation) By-Laws ("the By-laws" for short).

[2] It must be stated at the outset, that the same applicants have been denied an application for an interlocutory injunction to stop the 1st respondent's officers from conducting raids and locking up their premises where the tickets were sold. The judgment of YA Tuan Ravinthran Paramaguru delivered on 16 September 2009 in Kuching High Court Originating Summons No. 24-216-2009-(III) is now pending appeal in the Court of Appeal. In his grounds of judgment, YA Tuan Ravinthran Paramaguru has explained why the tickets sold by the applicants came within the definition of lottery. Having read the said judgment, I am in total agreement with him that the mechanics of the numbers forecast totalisator are such that it amounts to a lottery. I see no necessity to regurgitate what had been so admirably explained in His Lordship's judgment as I am not entirely confident that I could do better justice to the issue of whether the game is a lottery than what YA Tuan Ravinthran Paramaguru had done.

Alternative Argument

[3] Mr. Wong Sing Nang, counsel for the applicants has however submitted on an alternative issue. He highlighted me to a part of YA Tuan Ravinthran Paramaguru's decision in which His Lordship referred to s. 32(3) of the Pool Betting Act 1967 (Revised 1989)

and held that "one does not need a licence under the Pool Betting Act 1967 (Revised 1989) if the Betting scheme is approved by the Totalisator Board". Mr. Wong Sing Nang then submitted that since the By-laws provides that a licence from the 1st respondent is required for the sale of "any licensed lottery", this means that the said By-laws is not applicable to the applicants herein because YA Tuan Ravinthran Paramaguru has decided that they do not need a licence under the Pool Betting Act 1967.

[4] Datuk JC Fong for the respondents argued and referred to the applicants' own documentary exhibits – in particular exhs. CT7, CT10 and CT15 which show that the applicants themselves acknowledged that they have to obtain the licence from the State Secretary. The court, submitted Datuk JC Fong is not concerned with the licence under the Pool Betting Act 1967 but with the By-laws.

[5] In fairness to the applicants, the By-laws as quoted by me earlier, indeed provides that a licence is required for "a licensed lottery" and it is true that YA Tuan Ravinthran Paramaguru only decided that numbers forecast totalisator comes within the definition of "lottery" but he did not specifically find that it was a "licensed lottery".

[6] For the sake of clarity however, the By-laws is reproduced below.

Omnibus amendment

2. All Licensing of Miscellaneous Occupations By-laws specified in the Schedule shall be amended by adding the following new item in the First and Second Columns of the First Schedule -

Agency for the conduct or sale of any **licensed lottery**	RM1,000.00 per year payable on or before the first working day of each year.

(emphasis added)

Licensed Lottery

[7] Attractive though the argument canvassed by Mr. Wong Sing Nang in relation to the point above may be, I find myself unable to depart from the conclusion reached by YA Tuan Ravinthran

A Paramaguru's in the originating summons action, which was that the applicants need a licence under the By-laws to operate their business because firstly, that part of his decision quoted by Mr. Wong Sing Nang is in relation to the interpretation given to s. 32(2) of the Pool Betting Act 1967 and the licence required
B specifically under that Act.

[8] Secondly, in my view, the words 'licensed lottery' in the By-laws should not be given a literal interpretation to mean a lottery operation which has been issued with a 'licence' *per se* but one
C which means that the establishment of the operation has been sanctioned by an authority competent to do so. In this case, that would be the Malaysian Totalisator Board.

[9] In arriving at this conclusion, I am guided by the definition
D given in law to the word "licence". *Jowitt's The Dictionary of English Law* defines licence as a permission given by one man to another to do some act which without such permission it would be unlawful for him to do so and Latham CJ in *The Federal Commissioner of Taxation v. United Aircraft Corporation* 68 CLR 525 held that a
E licence "is an authority to do something which would otherwise be wrongful or illegal or inoperative". This quotation is lifted from *Stroud's Judicial Dictionary of Words and Phrases.*

[10] It is clear from the definitions given above that we can call that competent authority's consent to operate the business by
F whatever name – be it a permit, an approval or a licence but the fact is the operation of that business is with the blessing of that authority. To give a different interpretation to the words 'licensed lottery' would be to render absurd the operation of the By-laws in that an unlicensed lottery is allowed to operate without paying any
G licensing fees to the 1st respondent. This would also tantamount to the court condoning and encouraging the proliferation of unlicensed lottery outlets in the state, defeating the very object of requiring licences to be issued in the first place, which is so that the 1st respondent can monitor and regulate the operation of these outlets
H with respect to factors such as suitability of their location and opening hours, for instance.

[11] In giving the words of the legislature a purposive interpretation and not a literal one, I am much guided by the words
I of Lord Denning MR in *Nothman v. Barnet London Borough Council (CA)* [1978] 1 WLR 220, a case in which the Court of Appeal had

to interprete para. 10 of Schedule 1 to the Trade Union and Labour Relations Act 1974. A literal interpretation of that provision would mean that a woman who was dismissed after reaching the age of 60 (the retirement age being 65) cannot claim for reinstatement but a man of the same age and position could. In giving the provision a purposive interpretation so as to provide equal protection in the law to both sexes, Lord Denning M.R. said at p. 228:

> In all cases now in the interpretation of statutes we adopt such a construction as will "promote the general legislative purpose" underlying the provision. It is no longer necessary for the judges to wring their hands and say: "There is nothing we can do about it." Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it – by reading words in, if necessary – so as to do what Parliament would have done, had they had the situation in mind.

[12] For the record, this case was cited by the Court of Appeal in *Tetuan Kumar Jaspal Quah & Aishah v. Far Legion Sdn Bhd & Anor* [2007] 3 CLJ 230.

[13] Thus, I would conclude that the applicants' operation here falls within the definition of 'licensed lottery' in the By-laws and reached the same conclusion as YA Tuan Ravinthran Paramaguru in that they must obtain a licence stipulated in the By-laws. The undisputed fact is they did not do so and there is no room for argument on the legality of action of the 1st respondent council in issuing the impugned notice dated 26 August 2009. It follows therefore that their application for leave is frivolous and vexatious and they have not crossed the threshold for leave to be given to file their application for *certiorari* as well as the other reliefs sought in their application.

[14] Accordingly, I dismiss this application with costs to the respondents to be taxed unless agreed. If not agreed, I would cap getting-up at RM5,000. In my view, the amount of getting-up is reasonable because the issues raised in this application have been substantially canvassed in the originating summons action.